RHB Bank Bhd v Nordin bin Suboh & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02–(IM)–836 OF 2005
GOPAL SRI RAM FCJ, SULONG MATJERAIE AND AHMAD MAAROP JJCA
27 APRIL 2009

Civil Procedure — Injunction — Interlocutory injunction — Appeal against granting of — Whether balance of justice lied in granting injunction — Whether appellate intervention warranted

The respondents borrowed money from the appellant bank to purchase a unit of apartment from a housing developer. The respondents defaulted in their repayment of the loan and hence the appellant took steps to sell of the apartment to realise the money owing to it. However the respondents applied for an injunction to restrain the appellant from its intended course of action, which was allowed by the High Court. Hence this appeal by the appellant on the ground that the High Court had erred in granting an interlocutory injunction.

Held, allowing the appeal with costs here and court below:
In the present case, the appellant was exercising its contractual power given by the respondents under the terms of the assignment. A reasonable tribunal armed with the facts and evidential material that was placed before the High Court, would not have granted an injunction in this case. The balance of justice plainly lied with the appellant. In the circumstances, the learned judge had failed to take into account relevant considerations and to ask herself the correct question and accordingly the appellate intervention was warranted.

[Bahasa Malaysia summary

Responden-responden meminjam wang daripada bank perayu untuk membeli satu unit pangsapuri daripada pembangun perumahan. Responden-responden gagal membuat bayaran semula pinjaman mereka dan oleh itu perayu mengambil langkah-langkah untuk menjual pangsapuri tersebut untuk mendapatkan wang yang terhutang kepada mereka. Walau bagaimanapun, responden-responden memohon untuk injunksi untuk menghalang perayu daripada kausa tindakan yang diniatkan, yang dibenarkan oleh Mahkamah Tinggi. Maka rayuan ini oleh perayu atas alasan bahawa Mahkamah Tinggi telah terkhilaf dalam memberikan injunksi interlokutori.

Diputuskan, membenarkan rayuan dengan kos di sini dan di Mahkamah Tinggi:

Di dalam kes ini perayu sedang melaksanakan kuasa kontraknya yang diberikan oleh responden-responden di bawah terma-terma penyerahhakan. Sebuah tribunal munasabah dengan fakta dan material keterangan yang diletakkan di hadapan Mahkamah Tinggi, tidak akan memberikan injunksi di dalam kes ini. Imbangan keadilan jelas memihak kepada perayu. Dalam keadaan ini, hakim yang bijaksana telah gagal untuk mengambil kira pertimbangan yang relevan dan menanya soalan yang betul dan oleh itu campur tangan mahkamah rayuan adalah wajar.]

Notes

For cases on interlocutory injunction, see 2(2) *Mallal's Digest* (4th Ed, 2010 Reissue) Paras 3544-3691.

Tan Weng Hung (Che Mokhtar & Ling) for the appellant.
Harpal Singh Grewal (Harwinder Kaur with him) (AJ Ariffin, Yeo & Harpal) for the respondent.

Gopal Sri Ram FCJ (delivering judgment of the court):

[1] This is the judgment of the court.

[2] The complaint in this appeal is that the High Court erred in granting an interlocutory injunction restraining the instant appellant from selling by contract a unit of apartment purchased by the respondents from a housing developer who is not a party in the proceedings now before us. The brief facts are as follows. The appellant is a bank. The respondents borrowed money from it to purchase the apartment in question from developer. It took the developer about six years to complete construction. Later, the respondents took vacant possession of his property and let it out to a tenant. Later still, the respondents defaulted in making repayment and the appellant bank took steps to sell off the security, that is to say the apartment in question, to realise the money owing to it. We must now say a word about the security. This is not a case in which the apartment has a strata title. Indeed there is no title. What the respondents obtained from the developer was a sale and purchase agreement under which the parties acquired the apartment. The respondents' rights under the said agreement were absolutely assigned to the appellant bank to secure the monies in question. Returning to the narrative, when the appellant bank took steps to realise its security, the respondents took out an application for an injunction to restrain the appellant from its intended course of action. The High Court granted that injunction.

[3] Now it has been said often enough that in an appeal of this nature the initial function of this court is one review only. We have no original discretion of our own to exercise. That we may only do when it was demonstrated that the

primary judge erred in exercising discretion. In other words we must be satisfied that the judge took into account irrelevant considerations or asked herself or himself the wrong question or misdirected herself or himself on the facts or made an order that results in a miscarriage of justice. In the present case, the appellant was exercising its contractual power given it by the respondents under the terms of the assignment. So it was doing nothing illegal. The respondents on other hand had taken the benefit of the apartment, enjoyed it and obtained a financial advantage from the rent they collected. In these set of circumstances the question which the learned judge ought to ask herself is whether it was just and equitable for an injunction to issue against the appellant. Although we are disadvantaged in the present instance by the absence of written reasons, we are entirely satisfied that a reasonable tribunal armed with the facts and evidential material that was placed before the High Court, would not have granted an injunction in this case. In our judgment, the balance of justice plainly lies with the appellant. We are therefore of the view that the learned judge in the present case failed to take into account relevant considerations and to ask herself the correct question. This accordingly is a case in which appellate intervention is warranted.

[4] For the reasons already given the appeal is allowed. The injunction is forthwith dissolved. There shall be an inquiry as to damages. But the appellant bank must take out a summons to have that done. This is not the end of the matter. Counsel for respondents quite rightly request an early disposal for this case. We are told that this suit has been set down for case management in June. That is clearly too far away. We therefore direct that the matter be brought forward to 5 May 2009 at 9am. before the managing judge to enable him to assign an early date for trial of the action. The appellant will have all the costs here and below. The deposit shall be refunded to the appellant.

Appeal allowed with costs here and court below.

Reported by MF Ibrahim